

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BARTON ANTHONY STROMSKI; and
JACKIE LYNN CLARK-STROMSKI

Civil No. 02-1636-CO

Plaintiffs,

FINDINGS AND RECOMMENDATION

v.

JOSH FINDLEY; JEFF GORDON; and
ROBERT KRIEGER

Defendants.

COONEY, Magistrate Judge:

In its Findings and Recommendation on plaintiff Jackie Lynn Clark-Stromski's motion to withdraw as party plaintiff (#33), the court concluded in its Discussion that the action should be dismissed without prejudice, and without costs and fees and, in its Recommendation, recommended that plaintiff's motion be granted, without prejudice, and without fees and costs. The Findings and Recommendation was adopted by Order (#35) and Judgment was entered dismissing this action without prejudice and without fees and costs to any party (#36).

Any recommendation that the action be dismissed as to both plaintiffs was inadvertent. Any dismissal should have been as to plaintiff Jackie Lynn Clark-Stromski only. Accordingly, the court recommends that the Judgment entered July 14, 2005 (#36), dismissing this action without prejudice

and without fees and costs to any party, be vacated.

RECOMMENDATION

For the foregoing reasons, the Judgment entered July 14, 2005 (#36), dismissing this action as to both plaintiffs without prejudice and without fees and costs to any party, should be vacated, and this case should be dismissed as to plaintiff Jackie Lynn Clark-Stromski only, without prejudice, and without fees and costs.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. ***The parties shall have ten days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have ten days within which to file a response to the objections.*** Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this _ 19 ___ day of July, 2005.

/s/
UNITED STATES MAGISTRATE JUDGE